Bingham, 29 Vt. R. 82. No party is estopped by a declaration made in ignorance of his rights: Thrall *v.* Lothrop, 30 Vt. R. 307. The declaration must be made with the intent to lead another to believe the person making the declaration will assert no claim, and it must thus mislead the other to his detriment: White *v.* Langdon, 30 Vt. R. 599. After considerable discussion and reflection in Strong *v.* Ellsworth, 26 Vt. R. 366, the rule was thus declared: "He who by his words, or his actions, or his silence even, intentionally or carelessly induces another to do an act, which he would not otherwise have done, and which will prove injurious to him if he is not allowed to insist upon the fulfilment of the expectation upon which he did the act, may insist upon such fulfilment; and equally if he has omitted to do any act, trusting to the assurance of some other thus given, and which omission will be prejudicial to him; if the assurance is not made good, he may insist it shall be made good." From the recent English case of Swan *v.* The North British Australasian Company, 10 Jur. N. S. 102 (1864), in the Exchequer Chamber, it would seem that carelessness, to amount to an estoppel upon the party, as to asserting the truth in his favor, must be what the law denominates criminal or culpable, *crassa negligentia.*

I. F. R.

Supreme Court of Pennsylvania.

SCHOLLENBERGER *vs.* BRINTON.

The sum agreed in a ground-rent deed to be paid for the extinguishment of the ground-rent is not an estate, but a debt when the owner of the land has elected to pay it.

The clause for the extinguishment of the rent on payment of a certain sum, does not make the contract a mere offer to sell hereafter on certain conditions, but a present and complete sale with an alternative mode of payment at the option of the grantee.

Therefore where a ground-rent is payable by the terms of the deed, in "lawful *silver money* of the United States," and there is a clause of extinguishment on the payment of a certain sum "lawful money, as aforesaid;" the latter is payable in legal tender notes of the United States.

At Nisi Prius, May 1864, the opinion of the Court was delivered by

AGNEW, J.—This is a demurrer to the complainant's bill, brought for specific performance, to compel the defendant to execute a release and extinguishment of a ground-rent. The defendant sold to John McDowell, whose title complainant owns, a lot in Phila-

delphia, upon a ground-rent of $211.50, payable half-yearly in "lawful *silver money* of the United States of America." The deed contains the following clause of redemption:

"Provided always, nevertheless, that if the said John McDowell, or his heirs or assigns, shall and do at any time hereafter, pay or cause to be paid unto the said Mary M. Brinton, her heirs or assigns, the sum of three thousand five hundred and twenty-five dollars *lawful money as aforesaid*, and the arrearages of said yearly rent to the time of such payment, then the same shall for ever thereafter cease and be extinguished, and the covenant for the payment thereof shall become void, and then the said Mary M. Brinton, her heirs and assigns, shall and will, at the proper costs and charges in the law of the said grantee his heirs or assigns, seal, and execute a sufficient release and discharge of the said yearly rent, hereby reserved to the said John McDowell and his heirs and assigns for ever, anything hereinbefore contained to the contrary thereof in anywise notwithstanding."

The complainant tendered to the defendant the sum required to extinguish the ground-rent in *legal tender* notes of the United States, which the defendant declined to accept, and the point raised by the demurrer is, that the tender was insufficient, because not made in current silver money of the United States.

The question of the constitutionality of the Legal Tender Act was raised in the argument, and the case rested on the grounds that the subject of payment was not a *debt*, but an *estate* subject to redemption only on stipulated terms, and that the owner of the rent only bargained that the owner of the land *might* buy it off upon fixed terms.

I think neither of these positions is correct. The sum which was agreed to be paid in extinguishment of the rent is not an estate, when the owner of the land elects to pay it. The mistake is in confounding the value of the interest or estate which the owner of the ground-rent has in the ground-rent with the price or sum to be paid to extinguish it. Unquestionably, the interest of the ground-rent owner is really subject to descent, to execution, and to alienation as real estate, but the money which the purchaser of

the land agreed to pay is the price or consideration of the estate of the ground-rent owner paid to extinguish it.

What was the transaction? The ground-rent owner was the owner of the land. He agreed to sell it to the purchaser for an alternative consideration, to wit: the interest of the price, $211.50, payable annually for ever if the purchaser chooses so to pay; or, when he elects, the price itself, $3525. The consideration is, therefore, $211.50 annually, or $3525 when the purchaser chooses so to pay it. When the deed was made, the case then stood thus: The grantee became vested with a freehold of inheritance in the *land*, and the grantor with an incorporeal hereditament in the rent, *subject* by the terms of the conveyance itself (not a new bargain), to be divested by the payment of the price in the alternative form after election.

Thus, a simple analysis of the transaction shows that the purchaser, when he elects to pay the principal, does no more than pay the price set upon the property by the terms of the original bargain, and that at the moment when he makes his election to cease paying the annual price and buy the principal, he has made it a debt; that is, a specific sum of money, which, by the deed, he owes, and agrees to pay when he elects to do so.

What he pays is not an estate, but it is that which he pays *for* the estate. It is money, it is specific and certain, and it is that which he has agreed by express terms to pay to extinguish the estate of the ground-rent owner. What is this but a debt? In what does it differ from any other contract where an option or election is given to the buyer? Suppose the subject of sale to be a chattel instead of land, and the purchaser agrees to pay the annual interest of the price for ever, or, at his option, to pay the principal, does the want of power in the vendor to compel him to make his election to pay the principal change the character of the principal as a debt when he does elect to pay it? How is this case any different? If the ground-rent owner cannot enforce payment of the principal, it is not because the money, when offered to be paid, is not of the nature of a debt, but because he has given his grantee an option to pay in either way. It is his deed or contract which prevents

the exaction, not the nature of the sum to be paid. It is a sum of money arising in contract; it is the price of an estate; it is paid to extinguish it; and it is certain and fixed. If this be not a debt, what is?

The other objection is not more sound, that the owner of the ground-rent only bargained that he *would* sell on stipulated terms. The idea, as I understand it, is this: That by the terms of this clause the owner of the ground-rent offers to sell the ground-rent to the grantee upon his paying to the former so many dollars in *silver* money, and that until the grantee comes to his terms he is not bound by the offer; but it is an unaccepted proposition until the grantee comes up to his terms of silver money. This is fallacious. The redemption clause is not a contract for a future sale of the ground-rent, but is a provision for the cessation and extinguishment of the ground-rent when the stipulated price, the sum already agreed upon for the purchase, shall be paid. It is a proviso that when the sum is paid, with arrears of the yearly rent, "then the same (to wit, yearly rent) shall for ever thereafter cease and be *extinguished*, and the *covenant* for the payment thereof shall *become void*." It was, therefore, not an offer to sell, but the sale had been made, the deed was its execution, and the clauses merely provided for the alternative mode of payment. This will be the more manifest from the nature of the deed. It conveys the land for the nominal consideration of one dollar, a present valuable consideration introduced to give the deed the legal effect of a feoffment, or deed with livery of seisin. But the real consideration is the covenant of the grantee to pay the annual interest or rent; or, when he so elects, the stipulated price in full; and the grantor presently covenants in the deed that the payment, when made, shall extinguish the *covenant* to pay rent. The instrument is operative at the time of its date, and needs no new act of the grantor to give it effect.

It is because the grantee so provided and covenanted in the deed itself that extinguishment takes place. It is true the deed provides for a release and discharge of the yearly rent; but this, it is manifest, was but to preserve the evidence, and provide for a clean

record; so that the registry which shows the charge should also show the discharge. The operative act is the payment. There can be no doubt that payment in itself discharges the rent, and if the ground-rent owner should die the next moment, the evidence of the payment would be all sufficient for the owner of the land; and the reason is, that this is the provision of the deed itself. On payment being made, the language is—"Then the same (rent) shall for ever thereafter cease and become extinguished."

It follows from these considerations that the demurrer is not well taken. It must be overruled, and the defendant is ordered to answer the bill within thirty days from the filing of the order.

Court of Appeals of New York.

LUDLAM, EXECUTRIX, *vs.* LUDLAM *et al.*

In the absence of any law of the United States governing the particular case, the question whether one born out of the United States is a citizen, is to be determined by the common law, as it existed, irrespective of English statutes, at the adoption of the Federal Constitution.

At common law, the duty of allegiance and the rights of citizenship passed by descent, the child following the condition of the father; so that if a father out of the realm was within the allegiance of the king, his child by an alien wife was born a subject to the British crown.

The statute (25 Edw. III., ch. 2) upon this point, is a declaratory, and not an enabling act.

Whether a citizen is capable of renouncing his allegiance without the consent of his government, or may when his government has not prohibited it, *quære.*

But if he may, he cannot divest himself of his citizenship until he becomes the citizen of another government, and this he cannot do until he arrives at full age.

Held, accordingly, that where a citizen of the United States went to Peru at the age of eighteen years, with the intention of indefinite continuance there for the purpose of trading, but took no steps to be naturalized in Peru, or to indicate an intention of a permanent change of domicil, otherwise than as before stated, his child born to him in Peru of a wife the native of that country, is a citizen of the United States.

A finding as of a fact, that the father voluntarily "expatriated" himself, with the intention of becoming a permanent resident of Peru, regarded as immaterial.